

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA

5 v.

09 Cr. 339 (RWS)

6 ANTONIO GUERRERO,

Sentence

7 Defendant.
-----x

8 New York, N.Y.
9 October 6, 2014
10 2:20 p.m.

11 Before:

12 HON. ROBERT W. SWEET

District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

18 LAURIE A. KORENBAUM

19 Assistant United States Attorney

20 ROBERT KRAKOW

21 Attorney for Defendant

1 (Case called)

2 MS. KORENBAUM: Good afternoon, your Honor. Laurie
3 Korenbaum for the government. With me is Special Agent Charles
4 Mohan of Bureau of Alcohol, Tobacco, Firearms and Explosives.

5 MR. KRAKOW: Good afternoon. Robert Krakow for Mr.
6 Guerrero standing next to me.

7 THE COURT: Please be seated. Thank you very much.

8 MR. KRAKOW: I want to apologize and thank the Court
9 for its courtesy with the postponements because I was sick. I
10 appreciate it.

11 THE COURT: That's fine.

12 Mr. Krakow, have you had an opportunity to discuss the
13 pre-sentence report with your client and also my sentencing
14 opinion?

15 MR. KRAKOW: Yes, we have.

16 THE COURT: What would you like to tell me, sir?

17 MR. KRAKOW: First, we would like to bring the Court's
18 attention to some objections that we raised at pages 3 and 4 of
19 our sentencing submission dated 4/18/2014, primarily directed
20 to offense conduct that Mr. Guerrero was not charged with,
21 other murders that he was not charged with and had nothing to
22 do with. We would ask for those items to be removed from the
23 PSR as unnecessary to his offense conduct.

24 He was charged under 848. Even if it has to do with
25 the underlying conspiracy, it is still not relevant to the

1 offense of conviction and could unnecessarily cause problems
2 for him in the Bureau of Prisons, as the PSR follows him. We
3 did make that request, and we are restating it now.

4 Other than that, we are going to primarily rely on our
5 submissions. We know the Court has carefully reviewed them and
6 addressed them in the amended sentencing opinion.

7 We have some specific requests that we can address
8 later on. I note that we did ask for a variance from the
9 guidelines and the Court did not follow what we recommended,
10 but we know the Court did review that issue very carefully. We
11 appreciate that. The Court didn't necessarily agree with all
12 our points.

13 The other point is that Mr. Guerrero, and the Court
14 has acknowledged this and we deeply appreciate it, Mr.
15 Guerrero, we submit, has demonstrated extraordinary post-
16 offense conduct both in rebuilding his life, living a
17 productive life, being employed, building a family. Even in
18 the four, maybe five years now that he has been detained, he
19 has never had a problem, and he has tried to be very
20 productive. We know the Court did acknowledge that.

21 We have urged the Court to go even lower than the 25
22 years that the Court is imposing, but we do recognize that that
23 is a significant downward departure. We wanted to emphasize
24 that Mr. Guerrero's family members are here, the ones who could
25 be here because of getting away from work and other things. He

1 has a very, very supportive family, very accomplished and
2 respectful children, wife, so on, brother, sister, some of whom
3 here. We know the Court acknowledged that. We want to
4 emphasize that again.

5 We know the Court has said how difficult sentencing
6 is. We are not in any way suggesting the Court has not
7 acknowledged those points. We just wish it would be even
8 further is I guess the best way of saying it.

9 Mr. Guerrero is not going to address the Court,
10 because of the posture of the case. However, he also asked me
11 to state that he is very appreciative of all the courtesies
12 that the Court has extended to him throughout this long post-
13 conviction process pre-sentence.

14 We have some designation requests. We ask that the
15 Court recommend a designation to a location as close as New
16 York City as possible. I know the Court's authority here is
17 limited by the Bureau of Prisons' requirements. We ask for OCI
18 Fort Dix or Otisville medium. We think he will qualify for
19 them. If the Court could make even a general recommendation or
20 a specific one, we ask for that.

21 I am going to confer with Mr. Guerrero to see if there
22 is anything else he wants me to bring to your attention.

23 That is the extent of our remarks. We will rely on
24 our papers beyond that. Thank you again.

25 THE COURT: Mr. Guerrero, anything you would like to

1 tell me in addition to what has been stated on your behalf by
2 your lawyer?

3 THE DEFENDANT: Your Honor, he said what I wanted to
4 say.

5 THE COURT: Thank you. Understood.

6 Ms. Korenbaum.

7 MS. KORENBAUM: Your Honor, I will be brief. With
8 respect to the objections to the factual matter in the pre-
9 sentence report, the government has no objection to striking
10 that. I think it is based on the trial testimony. But the two
11 murders which Mr. Guerrero is being sentenced on, that material
12 obviously should stay in the PSR.

13 The PSR discusses his background information, the
14 murder of Jimmy Feliz. I believe the trial testimony certainly
15 indicates that Mr. Guerrero had knowledge that that was going
16 to happen beforehand and may have had some involvement in it,
17 but insufficient for the government, in our view, to charge him
18 with that murder.

19 He was not involved in the murders of Leonard Overman,
20 the nonfatal shooting of Alvino Wade, the murder of Corinne
21 Diaz, and the nonfatal shooting of Genaro Rodriguez. So to the
22 extent that he wishes that matter be struck from the pre-
23 sentence report, we have no objection.

24 THE COURT: What are we talking about? Do you think
25 paragraphs 28 --

1 MR. KRAKOW: We did have paragraph numbers.

2 THE COURT: I'm not sure I can put my finger on that.

3 MR. KRAKOW: We indicated paragraphs 17, 18, 19.

4 THE COURT: Hold on. Sorry. 17, yes. The government
5 has no objection?

6 MS. KORENBAUM: No objection, your Honor.

7 MR. KRAKOW: May I look at your PSR?

8 MS. KORENBAUM: Yes. This is the final one.

9 MR. KRAKOW: 17, 18, 19 were the Jimmy Feliz incident.
10 26 and 27 was Alvino Wade.

11 THE COURT: All right.

12 MR. KRAKOW: 35, 36, 37, and 38 were Carmen Diaz and
13 Genaro Rodriguez. Those are the ones that we referenced.

14 THE COURT: 35 through 38.

15 MS. KORENBAUM: That's right, your Honor.

16 MR. KRAKOW: Thank you, your Honor.

17 THE COURT: Those will be stricken, have been
18 stricken.

19 Yes?

20 MS. KORENBAUM: Your Honor, we are in possession of
21 your most recent sentencing opinion. We understand that you
22 intend to sentence Mr. Guerrero to 25 years. Assuming that we
23 are correct, we would rest on our papers and have no further
24 argument. To the extent the Court intends to sentence Mr.
25 Guerrero to less than 25, we would probably want to be heard on

1 that.

2 THE COURT: Thank you. I am going to adhere to my
3 sentencing opinion, all the terms and conditions in that
4 opinion.

5 You have a right to appeal, Mr. Guerrero and be
6 represented free of charge on that appeal. I will recommend
7 that the sentence be served in a facility as close as possible
8 to New York City.

9 MR. KRAKOW: Thank you, your Honor.

10 THE COURT: Is there anything further?

11 MR. KRAKOW: No, your Honor.

12 MS. KORENBAUM: Nothing from the government, your
13 Honor.

14 THE COURT: Thank you all.

15 (Adjourned)

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